No. 1841.

United States Circuit Court of Appeals for the Ninth Circuit

NORTHERN PACIFIC TERMINAL COMPANY, a Corporation,

PLAINTIFF IN ERROR

vs.

THE UNITED STATES OF AMERICA

DEFENDANT IN ERROR

Brief of Plaintiff in Error

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IN THE

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For the Ninth Circuit

NORTHERN PACIFIC TERMINAL COMPANY,
a corporation,
Plaintiff in Error,

v.

UNITED STATES OF AMERICA,
Defendant in Error.

Brief of Plaintiff in Error

STATEMENT

This cause comes before the court upon a writ of error to the Circuit Court for the District of Oregon in an action brought by the defendant in error to recover the penalty prescribed for violation of the provisions of the Act of June, 1906, entitled, An Act to prevent cruelty to animals.

The complaint alleges in substance that the Spokane, Portland & Seattle Railway Company, at Plymouth, in the State of Washington, on the 12th day of May, 1909, at the hour of 6 p. m. of said day, received from H. Brown twenty-five head of horses consigned to the Union Stock Yards in the City of Portland, Oregon.

That at said time and place said railway company loaded and confined said horses in Northern Pacific car No. 15766 and transported the same to Portland, Oregon, and delivered said shipment to the plaintiff in error at Portland at 7 a. m. on the 14th day of May, 1909.

That the plaintiff in error accepted said shipment of horses well knowing that said horses had been confined in said car for thirty-seven hours, and said horses were not unloaded by plaintiff in error until 8 o'clock and 30 minutes on said 14th day of May, 1909.

That the plaintiff in error knowingly and wilfully accepted said shipment of horses well knowing that said shipment had been confined in said car thirty-seven hours and well knowing that no extension of the twenty-eight-hour period had been given or made as required by law, and knowingly and wilfully failed to comply with the law requiring said horses to be unloaded for rest, water and feed before being confined to exceed twenty-eight hours.

That by reason of such failure plaintiff in error had forfeited and become liable to pay the penalty as provided by law, and demands judgment in the sum of $500.00 and costs.

To this complaint plaintiff in error filed its answer, in substance admitting and alleging, that at the hour of 8 o'clock and 12 minutes before noon of said 14th day of May, 1909, said Spokane, Portland & Seattle Railway Company, in the complaint mentioned, informed defendant by telephone that said Northern Pacific car No. 15766 loaded with horses was at its yards adjoining the terminal yards of defendant and requested defendant to switch said

car to the yards and pens of the Union Stock Yards Company, located in the immediate vicinity of the yards of the Spokane, Portland & Seattle Railway Company. That pursuant to such request defendant immediately sent an engine for said car so loaded with horses and delivered said car at said stock yards at the hour of 8:30 before noon of said day.

That said car with the horses therein loaded and contained was by an engine so furnished by defendant removed and transported from the yards of said Spokane, Portland & Seattle Railway Company to the tracks or switch of said Union Stock Yards Company between the hours of 8:12 and 8:30 before noon of said May 14, 1909, and that except as to such service so furnished, performed and rendered at the request of said railway company, defendant neither conveyed, transported, nor in any manner had in its charge, custody, possession or control either said car or the horses therein contained at any time, or at all.

That at the time of so switching said car it had no knowledge that said horses then in said car had been confined therein for a period of twenty-eight consecutive hours or any number of hours, or had been in any manner held confined or transported in violation of any law, rule or regulation of the United States, or any department thereof.

It was either proven or admitted upon the trial that the carload of horses was shipped at the time and in the manner substantially as in the complaint alleged, and that at the time demand was made by the railway company upon the plaintiff in error to switch the car to the

stock yards the horses had been by the railway company continuously confined in such car without rest, water or feed for a period of more than thirty-seven hours.

That the only transportation, custody or confinement of the shipment of horses described in the complaint by the plaintiff in error consisted in furnishing an engine and switching the car in which said horses were confined from the tracks of the railway company across its own yards to the stock pens, a distance of about 1,300 feet, such service being performed for and at the request and expense of the railway company, the time consumed in such service being eighteen minutes.

That prior to the filing of its complaint in this case, defendant in error brought its action against the railway company, based upon the same facts alleged in the complaint in this action, and in such action against said railway company recovered judgment as a penalty for the sum of $250.00 and the costs and disbursements therein taxed.

That said action was brought to recover the penalty for the same violation of the Act of Congress sought to be recovered upon in this action, and that said railway company duly paid said judgment.

That the distance between the yards of the railway company and the stock yards is about 1,300 feet. That said stock yards was the only place where the horses so confined in said car could have been rested, watered or fed. That said horses could not have been watered, rested or fed except by switching the car in which they were confined from the yards of the railway company to the stock pens, as was done by the plaintiff in error.

That the car of horses was switched by the plaintiff in error pursuant to a rush order telephoned by the car clerk of the railway company to the clerk of the yard master in the terminal yards, in which telephone message it was stated that the car was overdue four hours and they would have to hurry, and that this order was so given to induce the plaintiff in error to expedite the placing of the car at the stock yards to be unloaded, watered and fed. That this telephone message was so turned in at 8:12 before noon and that the horses so confined in said car were unloaded in the stock pens for rest, water and feed at 8:30 before noon of the same day, or within eighteen minutes from the time the order was so telephoned to the plaintiff in error.

Unless the words "car overdue four hours," which the car clerk of the railway company claims to have included in the rush order telephoned to the clerk of the yard master of the terminal company, shall be held to import such notice, there was no testimony showing or tending to show that the terminal company had any knowledge or information as to when or from where the horses had been shipped, or as to how long they had been confined in the car in which they then were.

Upon the case so made the plaintiff in error moved the court for an instructed verdict in its favor, which motion was by the court overruled.

The cause was thereupon submitted to the jury, and they having by their verdict assessed a penalty against defendant, judgment was entered upon such verdict in the sum of $100.00, together with costs and disbursements taxed at $82.82.

Defendant moved to set aside the verdict and for a new trial upon the grounds:

First, Insufficiency of evidence to sustain the verdict; and

Second, Error of law occurring at the trial, excepted to by defendant;

which motion was by the court overruled.

ASSIGNMENT OF ERRORS

First. The court erred in overruling the request of defendant's counsel to instruct the jury to find and return a verdict for the defendant.

Second. The court erred in refusing to give the following instruction to the jury as requested by defendant's counsel: "The defendant is not liable for any detention of the shipment of horses described in the complaint if such detention was of reasonable duration and necessary to the proper unloading them in a humane manner into properly equipped pens for rest, water and feed, and if you shall find that such detention was of reasonable duration and for such purpose only, your verdict must be for the defendant."

Third. The court erred in refusing to give the following instruction for the defendant: "It being alleged in the complaint that the shipment of horses therein described had prior to and at the time of their delivery been continuously confined by the Spokane, Portland & Seattle Railway Company for thirty-seven hours without water, rest or feed, if you shall find that plaintiff heretofore brought its action against the Spokane, Portland & Seattle

Railway Company for so confining said horses immediately prior to their delivery to the defendant, recovered judgment in such action and that such judgment has been satisfied, then I charge you that the time of such confinement elapsed while such shipment of horses was in possession of the Spokane, Portland & Seattle Railway Company cannot be charged against defendant."

Fourth. The court erred in giving the jury the following instruction over the exception of defendant: "If when the stock was delivered to the terminal company it had been carried more than thirty-six hours, and the terminal company knew that fact, the terminal company was not obliged to take that stock and carry it on to its destination, because in so doing it would be involved in an offense, and it is not obliged to commit an offense in order to carry that stock to its destination for the Spokane, Portland & Seattle Railway Company."

POINTS AND AUTHORITIES

I.

The plaintiff in error was not a connecting carrier of the shipment in question within the meaning of the Act. The destination of the horses was Portland, Oregon. They were consigned to the Union Stock Yards, the pens of which were located within 1,300 feet of the yards of the transportation company which brought them to their destination. The terminal company upon the demand of the transportation company furnished an engine and switched the car in which the horses were confined to such pens for the sole purpose of unloading them into

such pens for rest, water and feed. The time consumed in performing this service was eighteen minutes. It did not in any wise participate in the rate charged for transportation of the shipment, but furnished an engine and performed the switching service for and at the request of the transportation company for a fixed switching charge of $5.00. A connecting carrier within the meaning of the Act of 1906 is a line of transportation which interchanges freight or passengers with some other line having operating connections therewith. The Act was not intended to cover the breaking up of trains nor the distribution and unloading of freight already arrived at point of destination.

II.

The horses were neither confined nor transported by plaintiff in error within the contemplation of the Act. The car in which they were confined was simply switched to the pens appurtenant to the place where it had been left upon the switch track by the railway company, for the sole purpose of there being unloaded and fed. By the express provisions of the Act, the time necessarily consumed in unloading is not to be included in the time of confinement.

If it shall be held that the terminal yards of the railway company at Portland, 1,300 feet distant from the stock pens, was simply a way station and not the destination of the shipment, then we submit that both the transportation and confinement of the shipment was continuous by the railway company, and that the switching of the car by the engine provided by the terminal company was but

the means employed by the railway company to carry out its contract with the shipper. For the confinement of the horses, including the eighteen minutes required to switch the car to the stock pens, the railway company alone was responsible, and for such confinement that company has paid the penalty imposed by the Act.

III.

The time limit as fixed by the Act had expired when the request to the terminal company to switch the car was telephoned to it. The Spokane, Portland & Seattle Railway Company had already confined the horses beyond the limitations contained in the Act, for which that company became liable to the penalty thereby imposed. Recovery was had against the railway company, and it is insisted that the time so covered cannot be charged against the plaintiff in error as for a second violation of the Act.

United States v. Stock Yards Terminal Co., 172 Fed. 452;

United States v. Sioux City Stock Yards, 162 Fed. 561.

In the case first cited the cattle were carried from Lavina, Montana, to Dayton's Bluff, Minnesota, the time intervening being fifty-five hours and thirty-five minutes. The terminal company took the cattle from Dayton's Bluff to the stock yards at South St. Paul, a distance of about eleven miles, for the purpose of there being watered and fed. The stock was in the custody of the terminal company two hours and five minutes. The Government

brought its action against the initial carrier to recover the penalty for confining the stock in violation of the provisions of the law and recovered the penalty imposed by the Act. In that case the court said: "The first thirty-six hours elapsed while the stock was in possession of the Chicago, Milwaukee & St. Paul Railway Company and cannot be counted against the defendant for violation of the Act during that time. The law has been satisfied, the Chicago, Milwaukee & St. Paul Railway Company having been punished, therefore the only time elapsing while stock was in possession af the first carrier which could in any event be charged against the defendant is the time between eleven o'clock on the morning of the second day of August, and forty minutes past eight on the morning of the third day of August. This is twenty-one hours and forty minutes, being less than the twenty-eight hours, or in this case thirty-six hours, there has been no violation of the Act by the defendant company."

In the second case cited, the cattle were not delivered to the defendant until thirty-five minutes after the expiration of the time limited by the Act. They were received by the delivering company at Mapleton, Minnesota, at 6 p. m. March 30, carried to Sioux City, where they arrived at 5:40 a. m. April 1; were delivered to the defendant at 6:35 a. m. of the same day and by it delivered to the stock yards at 9 a. m., or two hours and twenty-five minutes after delivery to the receiving company.

If we substitute 1,300 feet as the distance of movement for eleven miles, eighteen minutes time of confinement for two hours and five minutes, the case referred to can in no wise be distinguished from the case under consideration.

In this case the court says: "But a single penalty is incurred for confining livestock beyond the period of twenty-eight or thirty-six hours, and the time of its confinement beyond that period is not material, unless it should be for another period of twenty-eight or thirty-six hours, when it might be claimed that another penalty had been incurred—a question, however, not now determined."

The case of the United States v. Stock Yards Terminal Ry. Co. was taken to the Circuit Court of Appeals, Eighth Circuit, and affirmed March 23, 1910. The majority of the court did not pass directly upon the question, but Sanborn, Circuit Judge, concurred in the affirmance of the judgment upon the identical grounds herein contended for, in the following language: "I concur in the affirmance of the judgment in this case on the ground that, conceding that the defendant knew that the St. Paul Railway Company had confined the cattle more than thirty-six hours when it delivered them to the defendant, yet the latter was not guilty of any offense because it did not contribute in any way to their confinement until after the statutory offense of confining them more than thirty-six hours had been committed, and there was no second violation of the law. The violation of the statute consisted in continuing the confinement over the thirty-six-hour limit. When that limit had been passed the offense was complete. Neither the St. Paul Company nor those to whom it delivered the cattle could commit or aid in committing that offense again, and none of them could commit a second offense by prolonging the confinement of the cattle after the thirty-six hours unless they confined them twenty-eight hours more. That was not done,

but within twenty-eight hours after the expiration of the thirty-six hours and as speedily as possible after it received the cattle the defendant released, fed and watered them." United States v. Sioux City Stock Yards Co., ~~(C. C.) 162 Fed. 556, 561~~. *178 Fed. 19.*

Such was the construction of the Act at the time demand was made upon the plaintiff in error to expedite the unloading of the horses in question for the purpose of rest, water and feed, yet the court below was of opinion that such action on the part of the defendant company constituted a wilful violation of the provisions of the statute and an intentional disregard of its requirements, notwithstanding the fact that the laws of the State of Oregon enjoin upon the defendant, under heavy penalty, the precise action taken by it.

We submit that in the light of these decisions—irrespective of the question of their correctness—there is no testimony to support the conclusion that defendant wilfully, or even willingly, violated the provisions of the Act.

RULES OF CONSTRUCTION

If a literal interpretation of an act leads to absurd or unjust consequences or great inconvenience, and the intention to adopt a reasonable statute may be fairly inferred, the court will adopt such construction as will effectuate the legislative intention and at the same time avoid objectionable consequences. The spirit of the act, not the letter, controls.

U. S. v. Kirby, 7 Wall. 482;
Tsoi Sim v. United States, 116 Fed. 920;
Knowlton v. Moore, 178 U. S. 97.

The Act of 1906 is entitled "An Act to prevent cruelty to animals." It provides that the time necessarily consumed in loading and unloading shall not be included as a part of confinement legislated against or prohibited by the Act. The evidence introduced by the Government in this case established beyond any question that the movement of the car containing the shipment of horses was necessary that the horses might be unloaded, watered and fed, the switching of the car and the unloading of the horses consuming precisely eighteen minutes of time. The pens in which the horses were unloaded were the only pens in the vicinity and afforded the only facilities for unloading and feeding them, and the sole purpose of such movement and the switching of said car was that the horses could be speedily unloaded, watered and fed. They had already been confined beyond the time fixed by the Act as the lawful limit of such confinement; the horses were gaunt and showed other evidences of need of speedy release. Refusal to comply with the demand of the transportation company, in whose possession they then were, to rush them to the pens for the purpose of rest, water and feed would in no wise have prevented cruelty to these animals, but on the contrary it is plain that such refusal would have promoted such cruelty, leaving the animals to perish. Refine or disguise it as we may, as interpreted by the court below, the Act forbids, except under penalty, relief to any livestock which has been confined in course of transportation beyond the time limited by the Act, no matter how great the necessity nor at how little cost such relief may be afforded.

That such was not the intention of Congress seems

plain to us. Refusal to switch the car as demanded would in addition to subjecting the horses to unnecessary hardship and prolonging their confinement, have subjected the defendant to penalties imposed by the laws of the State of Oregon.

Section 27 of the Act of February 28, 1907, Laws of Oregon, 1907, page 82, provides: "All railways shall * * * transfer, switch and deliver without discrimination or unreasonable delay, any freight or cars loaded or empty, destined to any point on its track, or any connecting lines * * * provided that precedence over other freight shall be given to livestock and perishable freight." Section 52 of the same Act provides: "If any railroad shall violate the provisions of this Act * * * or shall fail to perform any duty enjoined upon it, it shall forfeit and pay to the Treasurer of the State of Oregon not less than one hundred nor more than one thousand dollars for such offense."

In an action brought by the State to recover the penalty imposed by this Act for refusal to switch and unload the car of horses in question we could hardly expect to sustain a defense based upon the fact that the livestock were perishing for lack of service which we refused to render at the time such service was demanded, or that the carrier demanding such service had been guilty of a violation of the Act of Congress in creating the conditions which required immediate relief.

In the language of this court (Tsoi Sim v. United States), "Is it not manifest that Congress never intended by the passage of the law to have it applied to a case like the present." One of the cardinal rules as to interpreta-

tion of statutes is that they should receive reasonable construction.

In United States v. Kirby, 7 Wall. 482, Mr. Justice Field, in speaking for the court, said: "The laws should receive a sensible construction; general terms should be so limited in their application as not to lead to injustice, oppression or absurd construction. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

More directly in point is the case of the Holy Trinity Church v. United States, 143 U. S. 457, in which case the court said (page 472): "The construction invoked cannot be accepted as correct. It is a case where there was present a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil, and thereafter unexpectedly it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts under those circumstances to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore cannot be within the statute."

The object of the Act under which this action was brought is, as the title implies, to prevent cruelty to animals, and it is evident that Congress did not intend that it should be so construed as to promote such cruelty nor to punish those who with good intentions seek to relieve

animals already subjected to prolonged confinement contrary to the provisions of the Act.

Should this honorable court construe the Act at variance with the construction placed upon it by the courts whose decisions we have cited, the fact will still remain that those decisions were the only guide of which the plaintiff in error was advised at the time it was called upon to act.

Under the laws of the State it was commanded to switch the car without unreasonable delay, giving to that car of livestock precedence over all other freight. Giving full credence to the statement of the clerk of the railway company, made to the effect that he telephoned the clerk of the yard master of the terminal company that *"the car was overdue,"* for the purpose of expediting its transfer, we submit that there is no evidence to support the finding that the plaintiff in error either knowingly or wilfully violated any provisions of the Act. At the request of the railway company then having the horses in custody, the terminal company with all diligence assisted in unloading them into the pens appurtenant to its terminal yards for the sole purpose of rest, water and feeding, and this, the learned judge of the Circuit Court charged the jury, *"involved it in an offense which it was not obliged to commit."*

We respectfully submit that this was not the correct interpretation of the Act.

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